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OFFICE OF PETITIONS

In re Application of :
Zhonghua Lu et al :
Application No. 09/845,178 : DECISION GRANTING PETITION
Filed: April 27, 2001 : UNDER 37 CFR 1.181
Attorney Docket No. 56373USA9A.002 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 16, 2005, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-identified application.¹

The petition is GRANTED.

A Notice of Abandonment was mailed on February 18, 2005, stating that the application was abandoned for failure to timely pay the issue fee, which was due on or before January 6, 2005.

Petitioner asserts that the issue fee was paid prior to the due date of January 6, 2005. In support, petitioner has proffered a copy of the "Auto-Reply Facsimile Transmission" report, which discloses that the completed Part B - Fee(s) Transmittal form was transmitted to the USPTO on December 21, 2004 at 4:28 PM.

The file record does not include the originally submitted fee transmittal. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed,

¹ While a decision on the petition filed March 16, 2005 to withdraw from issue was rendered on March 22, 2005, no action was taken on the concurrently filed petition to revive.

terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;


(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Notice of October 6, 2004 is hereby withdrawn.

No fee has been assessed to the instant petition and none has been charged.

The issue fee in reply to the second Notice of Allowance and Fee(s) Due was timely received on May 27, 2005. Accordingly, this matter is being referred to Publishing Division for processing into a patent.


Frances Hicks
Petitions Examiner
Office of Petitions